trading program was included by California to provide flexibility in meeting the program, EPA does not believe it is a breach of the identicality requirement to allow states to account for banked credits in implementing the OTC LEV program. Also, if any states fail to implement the program in model year 1999, desire for regional consistency would also dictate that such states allow for any banked credits from other state programs in the implementation of their programs. In any case, states should coordinate with each other to ensure that the goals of regional consistency are not frustrated by differences in implementation of the NMOG fleet average.

Finally, as discussed in section VI.B.5, states may decide not to include the NMOG average in their implementation of the OTC LEV program in the initial model year if the state can only begin implementation of the program in the middle-to-end of the year. Manufacturers have objected that beginning implementation of the OTC LEV program in the middle of a calendar year would create significant problems for manufacturers in meeting the NMOG fleet average requirements for the first model year. This is because manufacturers meet the NMOG fleet average by coordinating their entire fleets to achieve the desired average. This process is susceptible to disruption when manufacturers must meet the NMOG average in the initial model year if the initial model year begins in the middle-to-end of a calendar year. This is because, under the model year regulations finalized today, only a portion of a manufacturer's fleet may be subject to the NMOG requirements for the initial model year if it is a "split" model year. EPA believes that manufacturers are well equipped to deal with this disruption by moving production start dates, especially given the two years of lead-time that manufacturers will have to coordinate their production schedules. However, given the fleet-wide nature of the NMOG fleet average and the desire for coordinated regional strategy, it may be appropriate for states that begin the OTC LEV program in the middle-to-end of a calendar year to refrain from implementing the NMOG fleet average for the initial model year. However, once the second model year begins, the NMOG fleet average must be a part of the state program. Also, states that initiate the OTC LEV program close to the beginning of the year (when disruption of the NMOG program should be minimal) should include the

NMOG fleet average as part of the OTC LEV program in the initial model year.

C. Sanctions

In the SNPRM, EPA addressed the imposition of sanctions in the case of state non-compliance with EPA's SIP call under section 110(k)(5) of the Act. EPA's rule to implement section 179 of the Act regarding sanctions specifies the order in which the statutory highway funding and offset ratio sanctions will apply, but does not address the imposition of sanctions in the case of state failure to comply with a SIP call under section 110(k)(5) of the Act. See 59 FR 38932 (Aug. 4, 1994)(sanctions rule). EPA therefore proposed in the SNPRM to extend the general scheme promulgated for sanctions under section 179 to the SIP call at issue here, with the 2:1 offset sanction applied first and the highway funding sanction applied second. EPA takes final action today to apply that general scheme to this SIP call.

EPA also requested comment on whether it should provide in the final rule that discretionary sanctions under section 110(m) of the Act would apply beginning immediately upon a finding of failure to submit the OTC LEV program (or a complete shortfall SIP revision) by the one-year deadline for that submission. EPA questioned whether the particular circumstances presented here by the two-year leadtime requirement may warrant such action. EPA is deferring final action on whether to exercise its discretion under section 110(m) to accelerate the imposition of sanctions if states fail to submit the OTC LEV program by the applicable deadline. The Agency will consider this issue further.

VI. Determination of Model Year

In the SNPRM, EPA proposed to promulgate regulations determining for purposes of Section 177 and Title II, Part A of the Act the definition of the term "model year" and certain related terms. *See* 59 FR at 48696–48698. EPA believed that this was a necessary step to remove any confusion regarding the commencement of a model year which may have resulted from conflicting views on this point in the New York and Massachusetts litigations regarding the adoption of the California LEV standards.

After review of the comments received on the proposed model year regulations published in the SNPRM, EPA has determined, for the reasons given below, in the SNPRM (59 FR 48697–48698), and in the response-tocomments documents, that it is appropriate at this time to promulgate these proposed regulations as final rules. At the request of AAMA, EPA is adding language clarifying the term "date on which a vehicle or engine is first produced."

EPA's proposed model year regulations, which apply to section 177 and Title II, retained the definition of "model year" found in both the Act and in existing EPA regulations (promulgated under section 202) as essentially "the manufacturer's annual production period." ³⁰ EPA's proposed model year regulations also codified the definition of "annual production period," which has appeared in various versions of EPA Advisory Circulars on this issue since 1972.

Under the proposed regulations, model year would be determined on an engine family basis for specific models within engine families, depending upon the date the first model in the engine family commences production. Therefore, the date upon which the model year begins may be different for each engine family that a manufacturer produces. EPA believes this approach is more appropriate than beginning model years industry-wide on a certain date (an alternative favored by the industry and discussed below) because it is more suited to the central purpose of section 177, which is to allow states to receive emission benefits from the California motor vehicle program while giving manufacturers two years of lead-time to prepare to meet the state standards. In addition, as discussed in the SNPRM (59 FR 48697), this approach provides manufacturers with substantial flexibility to continue to produce automobiles for one model year while initiating production of other models for a later model year.

EPA received critical comments on the proposed rule only from AAMA, which raised several objections. The main thrust of the AAMA argument is that the EPA model year regulations will cause more harm than good because they will compel manufacturers to provide both California and Federal vehicles to a single state in a single model year depending on that state's date of adoption of the California standards. For this reason, AAMA supported an industry-wide approach in which model years would begin on January 2 of the calendar year preceding the model year for which the model year is designated. However, as emphasized in the SNPRM, EPA believes that the model year regulations provide vehicle manufacturers the maximum flexibility in terms of adjusting the model year

³⁰ See 42 U.S.C. sec. 7521 (b)(3)(A)(i) (1993) and 40 CFR 86.082-2 (1994).